

## REMARKS

The Office Action mailed February 11, 2003 has been carefully reviewed and considered. In response, the Specification has been amended and claims 1, 7, 12 and 17 have been amended. Claims 1, 7, 12, and 17 having been amended, the claims now pending in the present applications are claims 1-18 accompanying the present Amendment in a Request for Continued Examination.

Favorable consideration is respectfully requested.

On page 2 of the Office Action, the Examiner's confirmation that the substitute drawings were received and the statement that the drawings are acceptable are noted with appreciation.

On page 2 in numbered paragraph 2, the disclosure is objected to. Amendments have been made to the specifications to address the informalities noted by the Examiner. The Examiner's assistance in regard to further corrections to the specification is noted with appreciation.

In numbered paragraph 3 on page 2, claims 1-3, 7, 8 and 17 were newly rejected under Section 102 (b) as being anticipated by Wheatley (U.S. Patent No. 5,251,951). The Examiner has noted that Wheatley discloses a tonneau cover apparatus (19) comprising: a flexible cover (20); a pivoting end plate (rear rail 30) having a radial engaging surface (rounded hinge pin 84); a support frame having side rails (28 and 29); and a locking member; wherein each side rail includes an end plate engagement member (corner members 34 and 35); and wherein the end plate engagement members have a radial receiving surface (hole 92).

Independent claims 1, 7 and 12 now recite an end plate having "an integrally formed radial engaging surface" and claim 17 recites the end plate having "spaced apart portions having integrally formed radial engaging surfaces".

It will be appreciated that the '951 patent to Wheatley discloses a rear rail 30 with which a pin 84 is separately engaged. It is this pin 84 that presumably includes the radial engaging surface cited as anticipating the instant inventions. It is respectfully submitted, however, that the pin 84 is separable from and therefore not an integrally formed part of the rear rail 30. In the invention now claimed in the present application, however, the end plate includes integrally formed radial surfaces, which cannot be separated from the end plate in the simple manner in which the pin 84 can be separated from the rear bar 30 of Wheatley, and which are not merely extensions of the rear rail 30, as disclosed in Wheatley. It is respectfully submitted, therefore, that the present claims are

distinguished from the Wheatley referenced cited by the Examiner in relation to the instant Section 102 rejection.

The Examiner's acknowledgment of allowable subject matter set forth on page 3 of the Office Action is noted with appreciation.

In view of the foregoing it is respectfully submitted that the application is now in condition for allowance and a notification to that effect is earnestly solicited.

Enclosed herewith is a petition for a three month extension of time in which to respond to the present Office Action, thereby extending the end of the period for responding from May 11, 2003 to August 11, 2003. A check to cover appropriate fees is also enclosed. If any further fees are required in this or any other regard to bring the present response into compliance with the rules of prosecution, please charge such fees to the deposit account of the undersigned attorney, deposit account No. 13-4300. Thank you.

The Examiner is respectfully urged to contact the undersigned attorney if there are any further matters standing in the way of the allowance of the above-identified application and it is believed these matters can be addressed in a telephone conference and thereby speed the conclusion of the present prosecution. The Examiner's consideration in this regard will be appreciated.

Respectfully submitted,  
for the Applicants  
by their attorneys,

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Date: August 8, 2003

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CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. 1.10)	
Express Mail Label No. <u>EV343281479US</u>	Date of Deposit: <u>August 8, 2003</u>
I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service "Express Mail" Service under 37 CFR 1.10, in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 1450.	
Robert C. Freed	<u>Robert C. Freed</u>
Print Name of Person Mailing Correspondence	[Signature]

## *Version with Markings to Show Changes Made*

### **In the Specification**

The paragraph beginning at page 24, line 5, has been amended as follows:

Yet another alternate embodiment is shown in FIG. 18 where an embodiment like that shown in FIGS. 16 and 17 is shown, but which differs primarily only because the tension springs 774 of the embodiment shown in FIGS. 16 and 17 are replaced by compression springs 974 which push, rather than pull the locking member 960 or members, if there are more than one, which there preferably are, against the flange 1018 and/or the stop bolt 1019. In this case, the compression spring 974 slides over and is engaged by a first spring guide protrusion 977 extending away from the locking member 960 and a second spring guide protrusion 979 extending away from a spring stop 983. All the other features of this embodiment are preferably the same as the features of the alternate embodiment shown in FIGS. 16 and 17 and this embodiment operates generally in the same way with the exception of the operation of the compression spring 974 as compared to the tension spring 774. The embodiment shown in FIG. 18 includes a support frame 1004 having a side rail ~~1008~~ 1006. The end plate 920 is shown in an engaged position. The flexible cover 910 is engaged with the support frame 1004 and the finger 968 of the locking member 960, configured to slidably engage an outwardly extending flange 1018 of the support frame 1004, is shown in an engage position, similar to that shown in FIG. 17 with respect to the prior embodiment, wherein the finger 968 can be slidably positioned under an end 1021 of the outwardly extending flange 1018, as shown.

### **In the Claims**

Claim 1 has been amended as follows:

1. (Twice Amended) A tonneau cover apparatus for removable attachment about a perimeter of a cargo box and tailgate of a pickup truck, the tonneau cover apparatus comprising:
  - a flexible cover;
  - an end plate;
  - a support frame for attachment to the cargo box; the support frame having first and

second side rails forming opposite sides of the support frame, each of said first and second side rails including an end plate engagement member, each end plate engagement member being configured to engage and receive similar, but spaced apart, portions of the end plate, wherein the end plate is attached to an end of the flexible cover and the end plate is configured to cooperatively engage and pivot with respect to each end plate engagement member as the end plate passes into and out of a fixed stretching position, wherein the flexible cover is tensed when the end plate passes into the fixed stretching position; the end plate having a an integrally formed radial engaging surface and each of the end plate engagement members having a receiving surface that engages at least a portion of the integrally formed radial engaging surface when the end plate pivots into the fixed stretching position.

Claim 7 has been amended as follows:

7. (Twice Amended) A tonneau cover apparatus for removable attachment about a top of a perimeter of a cargo box and tailgate of a pickup truck, the tonneau cover apparatus comprising:

a flexible cover;

an end plate;

a support frame for attachment to the cargo box; the support frame having first and second side rails forming opposite sides of the support frame, each of said first and second side rails including an end plate engagement member, each end plate engagement member being configured to engage and receive similar, but spaced apart, portions of the end plate, wherein the end plate is attached to an end of the flexible cover and the end plate is configured to cooperatively engage and pivot with respect to each end plate engagement member as the end plate passes into and out of a fixed stretching position, wherein the flexible cover is tensed when the end plate passes into the fixed stretching position; the end plate having a an integrally formed radial engaging surface and each of the end plate engagement members having a radial receiving surface that engages at least a portion of the integrally formed radial engaging surface when the end plate pivots into the fixed stretching position.

Claim 12 has been amended as follows:

12. (Twice Amended) A tonneau cover apparatus for removable attachment about a top of a perimeter of a cargo box of a pickup truck, the perimeter of the cargo box including a forward

end, two opposing sidewalls and a tailgate, the tailgate being positioned rearward of the forward end and having an open position and a closed position, the flexible cover having first and second ends, the tonneau cover apparatus comprising:

a flexible cover having first and second ends;

a support frame for attachment to the cargo box, the support frame including two opposing side rails and a pair of end plate engagement members, one of which is secured to each of the respective opposing side rails rearward of the forward end when the support frame is attached to the cargo box of the pickup truck;

an end plate attached to the second end of the flexible cover, the end plate configured to cooperatively engage and pivot with respect to each of the respective end plate engagement members; wherein the end plate engagement members cooperate to engage the end plate when the first end of the flexible cover is operatively connected to the support frame forward of the respective engagement members, such that the end plate can pivot into and out of a fixed stretching position wherein the flexible cover is stretched to place a tension on the flexible cover; the end plate having a an integrally formed radial engaging surface and each of the end plate engagement members having a receiving surface which engages at least a portion of the integrally formed radial engaging surface when the end plate pivots into the fixed stretching position; and

a locking member, the locking member operatively connected to the end plate rearward of each of the end plate engagement members when the end plate is in the fixed stretching position and movable between a first position and a second position when the end plate is in the fixed stretching position; wherein the locking member prevents the end plate from being disengaged from the fixed stretching position when the locking member is in the first position, and wherein the end plate can be disengaged from the fixed stretching position when the locking member is in the second position.

Claim 17 has been amended as follows:

17. (Amended) A method of closing a tonneau cover apparatus, the method comprising the steps of:

(a) providing a tonneau cover apparatus for removable attachment about a top of a perimeter of a cargo box of a pickup truck, the cargo box including a front end, two sidewalls and a tailgate, the tonneau cover apparatus including:

a flexible cover having first and second ends;

an end plate; and

a support frame for attachment to the cargo box; the support frame having first and second side rails forming opposite sides of the support frame, each of said first and second side rails including an end plate engagement member, each end plate engagement member being configured to engage and receive spaced apart portions of the end plate; the first end of the flexible cover being secured to the support frame forward of the respective end plate engagement members and the second end of the flexible cover being secured to the end plate; wherein the end plate is configured to cooperatively engage and pivot with respect to each end plate engagement member as the end plate passes into and out of a fixed stretching position in which the tonneau cover is in a closed position when the support frame is attached to the top of the perimeter of the cargo box, wherein the flexible cover can be correspondingly tensed and relaxed when the end plate passes into and out of the fixed stretching position; the end plate having spaced apart portions having integrally formed radial engaging surfaces that are configured and arranged to engage with and pivot with respect to the respective end plate engagement members; each of the end plate engagement members having a radial receiving surface configured and arranged to receive and engage the integrally formed radial ~~portion~~ engaging surface of the end plate;

(b) engaging the spaced apart radial portions of the end plate with the radial receiving surfaces of the respective end plate engagement members;

(c) pivoting the end plate in a first direction with respect to the end plate engagement members such that the spaced apart radial portions of the end plate slide against the radial receiving surfaces until the flexible cover is tensed and the end plate is in the fixed stretching position.